

2029

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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19-CR-576 (BMC)

3 UNITED STATES OF AMERICA,

4 Plaintiff,

United States Courthouse
Brooklyn, New York

5 -against-

February 21, 2023
9:30 a.m.

6 GENARO GARCIA LUNA,

7 Defendant.

8 -----x

9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE BRIAN M. COGAN
10 UNITED STATES SENIOR DISTRICT JUDGE
BEFORE A JURY

11 APPEARANCES

12 For the Government:

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Eastern District of New York
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Brooklyn, New York 11201

13 BY: SARITHA KOMATIREDDY, ESQ.
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1 (In open court; Jury not present.)

2 THE COURT REPORTER: Judge Cogan wants me to ask the
3 parties to confer and discuss what would you like to be sent
4 back.

5 Requesting the testimony of Conejo in relation to
6 submarine seizure by the Coast Guard.

7 Requesting the testimony of Rey in relation to
8 submarine seizure.

9 MS. KOMATIREDDY: May we see the copy?

10 THE COURTROOM DEPUTY: And that is Court Exhibit
11 Number 8.

12 (Court Exhibit 8, was received in evidence.)

13 (Pause in the proceedings.)

14 THE COURTROOM DEPUTY: All rise.

15 The Honorable Brian Cogan presiding.

16 THE COURT: Good afternoon. Have a seat, please.

17 We've have given the parties a copy of a note from
18 the jury that we marked as Court Exhibit 8. It reads, quote,
19 requesting the testimony of Conejo in relation to a submarine
20 seizure by the Coast Guard.

21 Requesting the testimony of Rey in relation to a
22 submarine seizure.

23 Now the parties were given a copy of this note and
24 they have attempted to agree upon the portions that should be
25 sent back, as we have a done with other notes of this nature.

1 I understand they can't agree.

2 MS. KOMATIREDDY: Your Honor, we have a partial
3 agreement.

4 With respect to the testimony of Rey in relation to
5 a submarine seizure, the parties have agreed on two pages of
6 testimony, which Rey testified about a submarine that he had
7 investigated on behalf of the Sinaloa Cartel.

8 Our disagreement as to the first request of the
9 testimony of Conejo in relation to the submarine seizure,
10 there are approximately seven lines of testimony in
11 Proveda-Ortega's direct that relates to doing submarine
12 shipments in the amount of approximately 5,500 to 7,000 kilos,
13 which we elicited because it was in relation to the same
14 amount and type of shipment that was seized and is
15 corroborative.

16 My understanding, and we have a disagreement with
17 counsel, because the note specifically states "seizure by the
18 Coast Guard," and Proveda-Ortega did not state that this was a
19 seizure by the Coast Guard, which is true.

20 However, we would submit that this is testimony
21 responsive to the jury's request, because it is in relation to
22 submarine shipments, and is likely what they -- one of them
23 took down as a note during Conejo's testimony and it, again,
24 is the purpose of eliciting it was that these two do match up
25 in the description of the submarines used to transport cocaine

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1 on behalf of the Sinaloa Cartel.

2 MR. de CASTRO: Good afternoon.

3 First, the testimony the government is seeking to
4 provide the jury, first of all, it fails in sort of two
5 respects: One, it doesn't even talk about a seizure, and so
6 the note specifically talking about a submarine seizure by the
7 Coast Guard. So it fails to talk about a seizure in the first
8 place.

9 What he's talking about what page 848 where they
10 talk about using submarines in general many times, he says:
11 About how many kilos would you typically send on a submarine?
12 So it's just sort of general about submarine. And clearly
13 they're asking about a particular seizure.

14 And, secondly, it does not talk about the Coast
15 Guard seizing anything. So to us there's really no responsive
16 testimony in response to Question Number 1.

17 MS. KOMATIREDDY: If the Court would like, I can
18 hand up this page.

19 THE COURT: You took the words out of my mouth.

20 (Proffering.)

21 What's in dispute is lines 8 through 15?

22 MS. KOMATIREDDY: Yes, Your Honor.

23 (Pause in the proceedings.)

24 THE COURT: I agree with the defense.

25 I'll read it for the record.

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1 "QUESTION: I want to just take a couple of those
2 types of methods as examples to show the jury the size of the
3 shipments.

4 Did you ever do shipments with submarines?

5 "ANSWER: Many times.

6 "QUESTION: About many kilograms of cocaine would
7 typically be on a submarine shipment?

8 "ANSWER: We would send between 5 point -- 5500 to
9 7,000 kilos of cocaine."

10 I do think the question relates to a specific
11 seizure. I know the government wants to argue that one could
12 imply from this that that's what that specific seizure was,
13 but it's not general practice that this question and answer
14 excerpt was going towards.

15 So I'm going to sustain the objection, and the
16 parties should put together the remaining portions and we'll
17 bring those in.

18 We are in recess.

19 MR. de CASTRO: Judge, I'm sorry, before you do
20 that.

21 And the other thing is we were sort of talking about
22 for a second was whether we tell the jury that there's
23 something that it's not -- we haven't done this in the past,
24 that there is not testimony responsive to your question. I
25 don't know if that's sort of -- we just started talking about

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1 it, so we hadn't really, but we thought...

2 THE COURT: That's going to take a second note,
3 okay, if they come back to us and say, well, where is the...
4 Then I will answer that question right.

5 So far they're just asking for documents. We're
6 going to give them that.

7 MR. de CASTRO: Okay, thank you.

8 THE COURT: Okay, we're in recess.

9 MS. KOMATIREDDY: Thank you, Judge.

10 (A recess was taken at 2:13 p.m.)

11 THE COURTROOM DEPUTY: All rise.

12 THE COURT: Okay, have a seat.

13 We have a note that we'll mark as Court Exhibit 10
14 saying: We have reached a verdict, signed Juror Number 1.

15 Is there any reason why we should not bring in the
16 jury?

17 (Court Exhibit 10, was received in evidence.)

18 MS. KOMATIREDDY: No, Your Honor.

19 MR. de CASTRO: No, Your Honor.

20 THE COURT: All right.

21 Anyone have a view as to whether the alternates
22 should be brought in as well?

23 MS. KOMATIREDDY: We don't have a view.

24 MR. de CASTRO: No view, Judge.

25 THE COURT: All right.

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1 Bring in the alternates. It will just take a minute
2 to line them up.

3 (Pause in the proceedings.)

4 THE COURT: Okay, let's have the jury.

5 (Jury enters the courtroom.)

6 THE COURT: All right, everyone be seated.

7 Ladies and gentlemen, we have received your note
8 that says: We have reached a verdict. Signed by Juror
9 Number 1.

10 Juror Number 1, I take it you're the foreperson?

11 THE FOREPERSON: Yes.

12 THE COURT: All right. Is it correct that you have
13 reached a unanimous verdict?

14 THE FOREPERSON: Yes.

15 THE COURT: Mr. Scott, will you please go retrieve
16 the verdict form.

17 (Pause in the proceedings.)

18 THE COURT: Let me see counsel at sidebar for a
19 moment, please.

20 (Continued on the next page.)

21 (Sidebar conference.)

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SIDEBAR CONFERENCE

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1 (The following occurred at sidebar.)

2 MS. KOMATIREDDY: Violations?

3 THE COURT: That's not the problem. They have found
4 a guilty verdict on all counts except as to Count One where
5 they have checked proven as to both the earlier counts on the
6 violations, but they did not complete the answer to verdict on
7 Count One, guilty or not guilty?

8 I think it follows that they intend guilty, but the
9 question is, do I send them back so that they can complete
10 that?

11 MR. de CASTRO: It seems that they should complete
12 that.

13 THE COURT: Okay.

14 MS. KOMATIREDDY: Your Honor, we just ask for a very
15 specific instruction.

16 THE COURT: Yes.

17 (End of sidebar conference.)

18 (Continued on the next page.)

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1 (In open court; Jury present.)

2 THE COURT: Okay. Ladies and gentlemen, I'm going
3 to return the form to you because as to Count One, you did not
4 check an answer to the question, Guilty or not guilty? And we
5 need an express answer to that.

6 So I'm going to have Mr. Scott hand this back to
7 Juror Number 1, and we will excuse you to please continue your
8 deliberations and to complete the answer to that question.

9 (Jury exits the courtroom.)

10 THE COURT: I'm going to declare a recess, but I'd
11 like everyone, including the defendant and the reporter to
12 remain in court, because I expect we'll hear in the jury
13 momentarily. All right, we are in recess.

14 (A recess was taken at 2:49 p.m.)

15 THE COURT: All right, everyone be seated.

16 We are back in session. We have received a note
17 from the jury that we'll mark as Court Exhibit Number 11.
18 It's identical to the first, it says: We have reached a
19 verdict.

20 Let's bring the jury in please.

21 (Court Exhibit 11, was received in evidence.)

22 (Pause in the proceedings.)

23 (Jury enters the courtroom.)

24 THE COURT: All right, everyone be seated.

25 Ladies and gentlemen, we have received your second

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1 note that says you have reached a unanimous verdict.

2 I will again ask Juror Number 1: Is it correct that
3 you have reached a unanimous verdict?

4 THE FOREPERSON: Yes.

5 THE COURT: All right.

6 Mr. Scott, will you please retrieve the verdict form
7 from Juror Number 1?

8 Ladies and gentlemen, what I'm going to do now is
9 called "publishing the verdict". That simply means that I'm
10 going to read it out loud.

11 It's very important that you all listen carefully to
12 the way I read it, because either side, when it's done, has
13 the right to have me ask each of your individually if, in
14 fact, it represents your true and accurate verdict.

15 As to Count Two, the jury has checked -- that's the
16 international cocaine distribution conspiracy, the jury has
17 checked "guilty".

18 As to the question under that count: Has the
19 government proved beyond a reasonable doubt that the offense
20 involved 5 kilograms or more of cocaine? The jury has checked
21 "yes".

22 As To Count Three, cocaine distribution and
23 possession conspiracy. The jury has checked "guilty".

24 And as to that same question: 5 kilograms or more
25 of cocaine, the jury has said "yes".

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1 As to Count Four, the jury -- that's cocaine
2 importation conspiracy, the jury has checked "guilty".

3 And as to the question of whether it involved
4 5 kilograms or more of cocaine, the jury has checked "yes" as
5 to that as well.

6 Then to Count One, engaging in a continuing criminal
7 enterprise, the jury has checked "guilty".

8 As to the various predicate acts for that count, the
9 jury has checked:

10 Proven as to Count Two.

11 Proven as to Count Three.

12 Proven as to Count Four.

13 And then as to Violation One, proven.

14 Violation Two, proven.

15 Violation Three, proven.

16 Violation Four, proven.

17 Violation Five, proven.

18 And Violation Six, proven.

19 As to Count Five, making a false statement, the jury
20 has checked "guilty".

21 The form is signed and dated by Juror Number 1.

22 Would either side like me to poll the jury?

23 MR. de CASTRO: Yes.

24 THE COURT: All right.

25 Juror Number 1, does this verdict, as I have read

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1 it, represent your true and actual -- and accurate verdict?

2 THE JUROR: Yes, Your Honor.

3 THE COURT: Juror Number 2?

4 THE JUROR: Yes, Your Honor.

5 THE COURT: Juror Number 3?

6 THE JUROR: Yes, Your Honor.

7 THE COURT: Juror Number 4?

8 THE JUROR: Yes.

9 THE COURT: Juror Number 5?

10 THE JUROR: Yes, Your Honor.

11 THE COURT: Juror Number 6?

12 THE JUROR: Yes.

13 THE COURT: Juror Number 7?

14 THE JUROR: Yes, Your Honor.

15 THE COURT: Juror Number 8?

16 THE JUROR: Yes.

17 THE COURT: Juror Number 9?

18 THE JUROR: Yes, Your Honor.

19 THE COURT: Juror Number 10?

20 THE JUROR: Yes.

21 THE COURT: Juror Number 11?

22 THE JUROR: Yes, Your Honor.

23 THE COURT: And Juror Number 12?

24 THE JUROR: Yes, Your Honor.

25 THE COURT: Having polled the jury, is there any

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1 reason why I should not dismiss them with the thanks of the
2 Court?

3 MR. de CASTRO: No, Your Honor.

4 THE COURT: All right, ladies and gentlemen, I told
5 you when I gave you the final charge at the end of the case
6 that I had no opinion on how the case should come out. That
7 was true. And I still have no opinion on how the case should
8 come out. That was entirely left up to you.

9 But what I will tell you is having watched you and
10 the way you observed all the witnesses and all the testimony
11 so carefully, and really with no lagging in attention or
12 anything, I have to say you did a remarkable job.

13 You know, when you do a job like this, it brings you
14 closer to our system of democracy than anything else you're
15 going to do, even voting. And when you vote, you're one of
16 many millions of votes. But when you determine the faith of
17 someone who sits in this trial, that's the most important
18 thing, as I said before, that you'll probably undertake for a
19 long time.

20 You know, a lot of countries, they don't allow this
21 to happen. They have judges being the finder of the facts.
22 There are very few, actually, countries that would put this
23 kind of case to a jury. But we do it because we trust you.
24 We trust your common sense. We trust your hard work. And we
25 have confidence that -- again, not common thing at all whether

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1 the verdict is right or wrong. I have no view on that. That
2 you will go about it the right way, and you did.

3 I want to say special thanks to the alternates. As
4 I told you yesterday, in some ways it's thankless but you
5 cannot imagine the degree of security we get in knowing that
6 you were here. So, please, accept our thanks for having done
7 also a very difficult and long job.

8 All right, ladies and gentlemen, with that you are
9 dismissed with the thanks of the Court.

10 (Jury exits the courtroom.)

11 THE COURT: All right, be seated.

12 Mr. Scott, let's set a target sentencing date of
13 about 120 days out. What do we have, Mr. Scott?

14 THE COURTROOM DEPUTY: June 27th at --

15 THE COURT: I can't hear you.

16 THE COURTROOM DEPUTY: June 27th at 11 a.m.

17 THE COURT: June 27th at 11 a.m.

18 Is that okay with the parties?

19 MS. KOMATIREDDY: Yes.

20 MR. de CASTRO: Yes.

21 THE COURT: All right. Order of detention will
22 continue.

23 Anything further we need to do before we adjourn?

24 MR. de CASTRO: Judge, I'm not sure if we're going
25 to file a Rule 29 or 33 motion, but can you set a schedule for

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1 that, or would you like a letter?

2 THE COURT: I am happy to set a schedule now, if
3 you'd like, how much time do you think you need?

4 MR. de CASTRO: Forty-five days.

5 THE COURT: Forty-five days is fine.

6 That will be about April 7th.

7 MS. KOMATIREDDY: If we can have one month for
8 response.

9 THE COURT: Okay, that will be May 5th.

10 And reply on May 19th.

11 Any further business?

12 MR. de CASTRO: No.

13 MS. KOMATIREDDY: No.

14 THE COURT: Okay, thank you again for all your hard
15 work. We are adjourned.

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17 (Whereupon, the matter was concluded.)

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22 I certify that the foregoing is a correct transcript from the
23 record of proceedings in the above-entitled matter.

24 s/ Linda D. Danelczyk

February 21, 2023

25 LINDA D. DANELCZYK

DATE

"ANSWER: [2] 2033/5 2033/8 "QUESTION: [2] 2033/1 2033/6 MR. de CASTRO: [12] MS. KOMATIREDDY: [12] THE COURT REPORTER: [1] 2030/2 THE COURT: [43] THE COURTROOM DEPUTY: [5] 2030/10 2030/14 2034/11 2042/14 2042/16 THE FOREPERSON: [3] 2035/11 2035/14 2038/4 THE JUROR: [12] - ----- -x [2] 2029/2 2029/7 -against [1] 2029/5 1 10 [3] 2034/13 2034/17 2040/19 10004 [1] 2029/21 10007 [1] 2029/24 10038 [1] 2029/18 11 [3] 2037/17 2037/21 2040/21 11 a.m [2] 2042/16 2042/17 111 [1] 2029/18 11201 [1] 2029/13 12 [1] 2040/23 120 [1] 2042/13 15 [1] 2032/21 19-CR-576 [1] 2029/2 1900 [1] 2029/21 19th [1] 2043/10 2 2023 [2] 2029/5 2043/24 21 [2] 2029/5 2043/24 225 [1] 2029/23 271 [1] 2029/13 27th [3] 2042/14 2042/16 2042/17 2815 [1] 2029/23 29 [1] 2042/25 2:13 [1] 2034/10 2:49 [1] 2037/14 3 33 [1] 2042/25 5 5 kilograms [3] 2038/20 2038/24 2039/4 5,500 [1] 2031/12 5500 [1] 2033/8 576 [1] 2029/2 5th [1] 2043/9 6 602 [1] 2029/18	7 7,000 kilos [2] 2031/12 2033/9 7th [1] 2043/6 8 80 [1] 2029/21 848 [1] 2032/9 9 9:30 [1] 2029/5 A a.m [3] 2029/5 2042/16 2042/17 above-entitled [1] 2043/22 accept [1] 2042/6 accurate [2] 2038/14 2040/1 acts [1] 2039/8 actual [1] 2040/1 ADAM [1] 2029/16 adjourn [1] 2042/23 adjourned [1] 2043/15 afternoon [2] 2030/16 2032/2 agree [3] 2030/24 2031/1 2032/24 agreed [1] 2031/5 agreement [1] 2031/3 ALICE [1] 2029/24 allow [1] 2041/20 alternates [3] 2034/21 2035/1 2042/3 AMERICA [1] 2029/3 AMIR [1] 2029/16 amount [2] 2031/12 2031/14 answer [6] 2033/13 2034/4 2036/6 2037/4 2037/5 2037/8 APPEARANCES [1] 2029/11 April [1] 2043/6 April 7th [1] 2043/6 argue [1] 2033/11 Assistant [1] 2029/16 attempted [1] 2030/24 attention [1] 2041/11 B because [7] 2031/13 2031/17 2031/21 2037/3 2037/12 2038/12 2041/23 behalf [2] 2031/7 2032/1 beyond [1] 2038/19 BMC [1] 2029/2 BRIAN [2] 2029/9 2030/15 brings [1] 2041/13 Broad [1] 2029/21 Broadway [1] 2029/23 Brooklyn [2] 2029/4 2029/13 brought [1] 2034/22 business [1] 2043/11 C Cadman [1] 2029/13 cannot [1] 2042/5 carefully [2] 2038/11	2041/11 Cartel [2] 2031/7 2032/1 case [4] 2041/5 2041/6 2041/7 2041/23 CASTRO [2] 2029/17 2029/19 certify [1] 2043/22 CESAR [2] 2029/17 2029/19 charge [1] 2041/5 check [1] 2037/4 checked [10] clearly [1] 2032/12 closer [1] 2041/14 Coast [6] 2030/6 2030/20 2031/18 2031/19 2032/7 2032/14 cocaine [9] COGAN [3] 2029/9 2030/2 2030/15 common [2] 2041/24 2041/25 complete [4] 2036/6 2036/9 2036/11 2037/8 concluded [1] 2043/17 Conejo [3] 2030/5 2030/19 2031/9 Conejo's [1] 2031/23 confer [1] 2030/3 conference [2] 2035/21 2036/17 confidence [1] 2041/25 conspiracy [3] 2038/16 2038/23 2039/2 continue [2] 2037/7 2042/22 Continued [2] 2035/20 2036/18 continuing [1] 2039/6 copy [3] 2030/9 2030/17 2030/23 correct [3] 2035/12 2038/2 2043/22 corroborative [1] 2031/15 counsel [2] 2031/17 2035/18 count [13] Count Five [1] 2039/19 Count Four [2] 2039/1 2039/12 Count One [4] 2036/4 2036/7 2037/3 2039/6 Count Three [1] 2039/11 Count Two [1] 2039/10 countries [2] 2041/20 2041/22 counts [2] 2036/4 2036/5 couple [1] 2033/1 Courthouse [1] 2029/3 courtroom [4] 2035/5 2037/9 2037/23 2042/10 CR [1] 2029/2 criminal [2] 2029/8 2039/6 D Danelczyk [2] 2043/24 2043/25 date [2] 2042/12 2043/25 dated [1] 2039/21 de [2] 2029/17 2029/19
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